

Central Administrative Tribunal  
Principal Bench, New Delhi.

O.A.No.2387/90

New Delhi this the 7th Day of December, 1991.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J)  
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Shri Zahir Ahmed,  
S/o Sh. Jamir Ahmed Khan,  
R/o 12/A/47-H Jamalu Ka Bagh,  
Naujpur, Delhi. Applicant

(through Sh. A.S. Grewal, advocate)

versus

1. Commissidner of Police Delhi,  
Delhi Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi.
2. Addl. Commissioner of Police(A.P.),  
Delhi Police Headquarters, M.S.O.Bldg,  
I.P. Estate,  
New Delhi.
3. Deputy Commissioner of Police,  
3rd Bn.D.A.P, New Police Lines,  
Kingsway Camp,  
Delhi. Respondents

(through Sh. O.N. Trisal, advocate)

ORDER(ORAL)

delivered by Hon'ble Mr. Justice S.K. Dhaon, V.C.(J)

The applicant, a Constable in the Delhi Police was subjected to disciplinary proceedings. After accepting the enquiry officer's report, the disciplinary authority passed an order dismissing him from service. He remained unsuccessful in the appeal. The orders passed by the Disciplinary Authority and the Appellate Authority are being impugned in the present application.

A summary of allegations was given to the applicant. In it, the main averments were that he remained absent from duty for a period of 73 days 16 hours and 25 minutes. In accordance with the

84

procedure prescribed in the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter as referred to rules), a charge was framed against the applicant. The contents of the charge were substantially the same as the summary of allegations. We may immediately note that the alleged bad past conduct of the applicant was not the subject matter of either the summary of allegations or the charge.

The enquiry officer in the penultimate paragraph of its finding observed:-

"During the course of enquiry it is also proved that the defaulter is a habitual absentee and incorrigible type of person. He absented 7 times in a total period of absence of 26 days and 4 hours. Record is enclosed for perusal. The charge is proved fully."

The Disciplinary Authority has also observed that the applicant is a habitual absentee and had been dismissed in the past. In appeal he was reinstated. However, the punishment did not have any deterrent effect upon him (the applicant).

The Appellate Authority observed:-

".....His previous record also shows that he is habitual absentee and has resumed absent on 34 different occasions prior to the present one on which he has been proceeded against departmentally."

Rule 16(xi) of the Rules provides that if it is considered necessary to award a severe punishment to the defaulting officer by taking into

consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules.

As already indicated that the alleged bad past record of the applicant was not the subject matter of any charge. We note that the applicant has been given an extreme penalty of dismissal from service. We do not know what consideration would have been operated in the minds of the authorities if the alleged bad past record had not been taken into account. We are unable to appreciate the approach of the Enquiry Officer that even though the bad past record was not the subject matter of charge, it has recorded its finding that the same stands proved. The afore-quoted findings of the Enquiry Officer in relation to the bad past record are not sustainable and the same are quashed. We are doing so because we are satisfied that those findings are severable from the main part of the order.

The question still remains as to what order should be passed by us. It is not in our domain to substitute our judgement particularly when the matter relates to disciplinary proceedings and the award of punishment.


We have given a thoughtful consideration to the matter and we feel that ends of justice, will be met if we direct the Appellate Authority to rehear

SAJ

the appeal of the applicant on the footing that the alleged bad past record of the applicant does not stand proved and the finding of the Enquiry Officer on that score stand quashed. The Appellate Authority shall dispose of the appeal as expeditiously as possible on merits and in accordance with law after giving an oral hearing to the applicant. He shall do so within a period of three months from the date of production of a certified copy of this order by the applicant before it. It will be in the interest of justice if some officer other than Sh. R.P.S. Brar hear and dispose of the appeal.

The application succeeds in part. The appellate order dated 19.4.1990 is quashed. The Appellate Authority shall act in accordance with the directions given above.

There will be no order as to costs.

  
(B.N. Dhoundiyal)

Member(A)

  
(S.K. Dhaon)

Vice-Chairman(J)